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February 24, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., S.W., Room TWB-204
Washington, D.C. 20554

Re: Ex Parte Submission in CG Docket No. 02-278

Dear Ms. Dortch:

Attached is a letter from The Direct Marketing Association ("The DMA") to the Federal Trade Commission ("FTC") requesting that the FTC forbear or postpone the effective date of certain provisions of the recent amendments to the Telemarketing Sales Rule ("TSR") because those provisions potentially conflict with long-standing Federal Communications Commission ("FCC" or "this Commission"). We request that you make this letter a part of the above-referenced docket as this Commission considers its changes to the regulations implementing the Telephone Consumer Protection Act ("TCPA").

The DMA has specifically asked that the FTC forbear from enforcing Section 310.4(b)(1)(iv) of the TSR which is part of a "safe harbor" for abandoned calls if the seller or telemarketer "promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call has been placed." As the DMA explains in its Reply Comments at pages 20-26, this provision potentially conflicts with the current TCPA rules. Furthermore, the FCC's Notice of Proposed Rulemaking in the above-referenced docket suggests that this Commission is contemplating changes in the TCPA rules that could increase the chances of conflict by narrowing the scope of the exemptions from the ban on recorded messages found in the TCPA.

The FTC's decision to prohibit abandoned calls, subject to the safe harbor, is fundamentally a regulation on the use and operation of predictive dialers. Typically, the only time a telephone call is abandoned is when a marketer is using a predictive dialer. As The DMA explained in its comments and reply comments, predictive dialers are customer premises equipment ("CPE")

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The DMA hopes that this Commission will exercise its plenary authority over CPE to establish a single national standard for the use of predictive dialers. **As** the agency most expert in dealing with the intricacies of CPE and with the authority create a national standard, the DMA believes that only this Commission can properly balance the expectations of consumers with a workable abandonment standard that is technically feasible and complies with the TCPA.

Respectfully submitted,



Ian D. Volner

Attachment

cc: K. Dane Snowden
Margaret Egler
Jerry Cerasale